statute to be construed as one, unless the later statute expressly places a particular interpretation on the terms of the earlier Act; but if the earlier enactment was ambiguous, a later statute may throw light on the true interpretation of that enactment, as where a particular construction of the earlier enactment will render the later incorporated statute effectual. *Maxwell* on Interpretation of Statutes, 11th edition, at page 22 says:

"There is some presumption that Statutes passed to amend the law are directed against defects which have come into notice about the time when those Statutes passed."

In my judgment there can be little doubt that there was a defect in the Ordinance of 1947 which has been cured by the new Act by including in the definition of "gains or profits from an employment" the words "compensation for loss of employment" which are not to be found in the earlier Ordinance. Clearly, therefore, the compensation paid to the respondent on the abrogation of his contract of service is not liable to tax under the Ordinance of 1947. Indeed, it was acknowledged by counsel for the appellant in the court below that if the sum paid to the respondent is held to be compensation for loss of office, then it is not liable to income tax under that Ordinance.

That brings me to the only other point to be considered, namely, whether the amount paid to the respondent was a retiring gratuity within the meaning of section 13(1)(i) of the Income Tax Ordinance, 1947. The Special Commissioners held that it was not a retiring gratuity because the respondent never applied to retire and his employment was terminated at the instance of his employers. Before us it was contended for the appellant that since the respondent got a job in Trinidad soon after he stopped working for the society he cannot be said to have retired, the argument being that no man can be said to have retired unless he stops working altogether. I do not think either of these reasons is a valid reason for holding that what was paid to the respondent was not a retiring gratuity. A retirement from employment is none the less a retirement whether it takes place at the instance of the employer or of the employee, and it does not cease to be a retirement merely because the man subsequently finds a job with another employer. Counsel for the appellant laid emphasis on the fact that in section 13(1)(i) of the Ordinance the word "retiring" is followed immediately by the words "or death". But that is neither here nor there. While there may be finality in death, it does not necessarily follow that there is finality about retirement, because a person may retire from one employment and yet take up another. As far as the respondent was concerned, he had retired from his service with the society and the money was paid to him on such retirement. It was therefore a retiring gratuity which is exempt from income tax.

In the result, for the reasons I have stated the payment of $28,050 to the respondent was in respect of compensation for loss of office following on the abrogation of his service contract and therefore in the nature of capital payment and not in the nature of an income, so that it is not assessable to income tax. Alternatively, it was a payment in the nature of a retiring gratuity within the meaning of section 13(1)(i) of the Income Tax Ordinance, 1947 and therefore exempt from income tax.

I would dismiss the appeal with costs.

Azmi L.P. and **Suffian F.J.** concurred.

Appeal dismissed.

Solicitors: *Shearn, Delamore & Co.*

MANGGAI v. GOVERNMENT OF SARAWAK & ANOR.

[F.C. (Ismail Khan C.J. (Borneo), Ong C.J. (Malaya) & Gill F.J.) March 9, 1970]

[Kuching — Federal Court Civil Appeal No. X. 30 of 1969]

Practice and Procedure — Declaration — Application for declaration that the Resident's Native Court was functus officio and that a judgment delivered by it was null and void — Possibility of appeal to Native Court of Appeal — Adequate alternative remedy — Declaration refused.

The applicant had applied for a declaration, *inter alia*, that the Resident's native court was *functus officio* and without jurisdiction to hear the case by way of appeal or otherwise and that the purported judgment delivered by that court was null and void. The applicant did not pursue his right of appeal to the Native Court of Appeal. The High Court refused the application for a declaration and the applicant appealed to the Federal Court.

Held, dismissing the appeal: as the applicant had not pursued the alternative remedy available to him of an appeal to the Native Court of Appeal, the High Court was right in refusing to make the declaration.

Cases referred to:-

(1) *Anisminic Ltd.* v. *The Foreign Compensation Commission* [1969] 1 All E.R. 208.

(2) *Dyson* v. *Attorney-General* [1911] 1 K.B. 410.

(3) *Barraclough* v. *Brown* [1897] A.C. 615, 620.

(4) *Pasmore* v. *The Oswaldtwistle Urban District Council* [1898] A.C. 387, 394.

(5) *Wilkinson* v. *Barking Corporation* [1948] 1 K.B. 721, 724.

FEDERAL COURT.

T. O. Thomas for the appellant.

Mohamed Jemuri bin Serjan (Assistant Attorney-General) for the respondents.

Cur. Adv. Vult.

Ismail Khan C.J. (Borneo): I have read the judgment of my brother Gill with which I am in entire agreement. I would dismiss the appeal with costs.

Ong C.J. (Malaya): I agree with the judgment of my brother Gill and for the reasons stated by him I would dismiss the appeal with costs.

Gill F.J.: The appellant in this case, being plaintiff in the action in the High Court at Kuching from which this appeal has arisen, had a dispute with ex-penghulu Tawi anak Selaku, the first defendant to the action in the court below, over some land situate in the district

of Simanggang in the Second Division of Sarawak. This dispute was decided in his favour by a judgment of the district native court, Simanggang in civil case No. 9 of 1967 delivered on 6th November, 1967.

An appeal lies from the district native court to a Resident's native court, under section 8(1)(c) of the Native Courts Ordinance (Cap. 43 of the Laws of Sarawak, 1958). Section 7(3) of the Ordinance provides that: —

"Such appeal shall be made within thirty days of the date of such decision, or within such further time and upon such terms as the court to which appeal lies may in any particular case allow, and may be made either verbally or in writing and either personally or by proxy."

Section 7(2) of the Ordinance provides that the appeal shall be lodged with the district officer within whose district the native court, the decision of which is challenged, exercises jurisdiction, or with such other person or body as may be prescribed by rules made under section 19, and shall state the grounds of appeal. Proviso (a) to that section states that: —

"where no grounds are stated, the Resident, District Officer or such other person or body with whom the appeal is lawfully lodged shall endeavour within the period allowed for appeal to ascertain and record the grounds upon which the appeal is made;"

The first defendant indicated to the district officer, Simanggang his intention to appeal against the decision of the district native court, but despite the district officer's reminder that he should be quick about getting his appeal lodged, he took no concrete steps to have the appeal brought within the prescribed time.

After the expiry of the time fixed for lodging the appeal, the first defendant applied through his advocates, Messrs. Ibrahim & Co., to the Resident Second Division for his appeal to be accepted. This application was made by Messrs. Ibrahim & Co. presumably by their letter dated 22nd January, 1968, because on 29th January, 1968 the Resident Second Division, Mr. William Nais, wrote to them in reply to their letter to say that he was unable to entertain their client's plea for the acceptance of his appeal on the grounds, first, that the appeal was out of time and, secondly, that no request for extension of time had been made during the period of thirty days within which the appeal was required to be lodged. On 7th May, 1968 Messrs. Ibrahim & Co. wrote another letter to the Resident apparently to ask for extension of time to appeal. The Resident by his letter of 13th May, 1968 repeated that he could not approve ex-penghulu Tawi's request for extension of time.

On 14th May, 1968 the Resident wrote to the plaintiffs to say that he had given written instructions to the presiding magistrate Don Bosco Biscop to arrange with the assessors in the case to proceed to the disputed land with the survey team to have the disputed land surveyed in his presence and in the presence of Tawi anak Selaku. The plaintiff paid $200 towards the cost of surveying the disputed land and marking boundaries, and the survey as instructed by the Resident was carried out by officers of the Lands and Survey Departments at Simanggang.

It would appear that at this stage some sort of approach was made regarding the case to the State Secretary, Sarawak, who on 29th June, 1968 wrote to the Resident Second Division as follows: —

"It appears that the appellant is seeking for an order from the Resident's Native Court for an extension of time to appeal. Under section 7(3) of the Native Court Ordinance, the appeal from the District Native Court to the Resident's Native Court may be made verbally. However, you have indicated that the appeal was not acceptable without the grounds being submitted within the prescribed period of 30 days. You will note under section 7(2)(a), the Resident or the District Officer is empowered to assist the Penghulu to ascertain and record the grounds of appeal, but it was not done in this case. According to the affidavit submitted by Ibrahim & Co. (advocates), the appellant came to seek legal advice and assistance of the advocates for the preparation of the grounds of appeal on 15th January, 1968 and according to the affidavit the grounds were filed on the following day.

You will appreciate that it is difficult for the appellant to decide on his own what he ought to do. There was the question of money and which advocate to see. This took time. It was always difficult to expect the rural people to understand the intricacies of the law. The State Attorney-General is therefore of the view that the whole case should be liberally and reasonably considered and that the present application for an order for an extension of time to appeal should be considered by the Resident's Native Court. He is also of the opinion that since you have expressed and communicated your view on the matter to the advocates in your administrative capacity and in the interest of justice, another Resident should be appointed to sit in the Resident's Native Court to hear this appeal. In view of this I would therefore suggest that the Resident, 3rd Division should be requested among others to constitute a Resident's Native Court to consider this particular case."

On 2nd October, 1968 the plaintiff received a notice from the Resident's native court, Simanggang to the effect that the case between him and the first defendant had been set down for hearing in that court on 15th October, 1968. Thereupon, the plaintiff called on Mr. William Nais, the Resident Second Division, and inquired of him as to the nature of the case set down for hearing on 15th October, 1968. The Resident informed him that it was the case in which he had refused the appeal out of time. The plaintiff was further informed that any representation in the matter should be addressed to the Resident Third Division as the State Secretary had directed the Resident Third Division to hear the case at Simanggang on 15th October, 1968.

On 9th October, 1968 the plaintiff sent a telegram to the Resident Third Division asking for a postponement of the case for a month as he was unable at short notice to get witnesses and seek legal advice. This was followed by a letter from Messrs. Thomas & Co. asking for information about the nature of the case to be heard and applying for an adjournment to a convenient date to facilitate their preparation of the case. On 28th October, 1968 the Resident Third Division, Mr. Peter Tinggom, wrote to Messrs. Thomas & Co. to say that their letter had reached his office while he was busy with the re-hearing of the case at Simanggang, that the re-hearing was completed, the appeal allowed and the decision of the district native court in case No. 9 of 1967 quashed.

On 25th November, 1968 the plaintiff commenced this action in the High Court at Kuching against the first defendant and the respondents to this appeal as the second and third defendants respectively for a declaration that:

(1) the Resident's native court was *functus officio* and without jurisdiction to hear, by way of appeal or otherwise, native district court, Simanggang, civil case No. 9/67;

(2) the 3rd defendant had not the right/power/privilege to constitute and/or to preside over the Resident's Native Court for the purpose of hearing, by way of appeal or otherwise, native district court, Simanggang, case No. 9/67;

(3) the Resident's native court which purported to allow the appeal and quash the judgment of district native court, Simanggang, civil case No. 9/67 was illegally constituted;

(4) the purported judgment delivered by the 3rd defendant on the 18th day of October, 1968, claiming to be the judgment of the Resident's native court, Simanggang was null and void and of no legal force and effect.

The plaintiff also claimed damages upon the allegation that the defendants wrongfully and maliciously conspired and secretly combined amongst themselves to deprive the plaintiff of the fruits/benefits of the said judgment of the native district court, Simanggang, civil case No. 9 of 1967.

On 16th December, 1968 the second and third defendants took out a notice of motion for an order that the plaintiff's writ of summons and the statement of claim to be struck out. At the hearing of this notice of motion on 10th January, 1969 the plaintiff's counsel took some objections to the form of the notice and asked that it be dismissed with costs. The learned judge, however, declined to dismiss the motion out of hand and adjourned the matter to enable the second and third defendants to file an amended notice of motion. An amended notice of motion was taken out on 27th January, 1969, and the hearing took place on 30th January and 1st February, 1969. On judgment being delivered on 24th February, 1969 an order was made to strike out such paragraphs in the plaintiff's statement of claim as related to the declarations sought as against the second and third defendants, with liberty to the plaintiff to apply for leave to amend the writ of summons and the statement of claim in respect of the conspiracy issue raised therein.

It is against that order of 24th February, 1969 that the plaintiff has brought this appeal.

Although the appeal has been brought on several grounds, it really resolves itself into the question whether, upon the Resident Second Division notifying the first defendant that his appeal was out of time and that there could be no extension of time for him to appeal as no request for such extension was made during the period of thirty days within which the appeal was required to be lodged, the Resident's native court in the Second Division at Simanggang was *functus officio*, so that the order made on 15th October, 1968 by that court as constituted by the Resident Third Division was a nullity.

It was argued by Mr. Thomas on behalf of the appellant that the decision of the Resident's native court dated 15th October, 1968 was a nullity, and that on the authority of the decision of the House of Lords in *Anisminic, Ltd.* v. *The Foreign Compensation Commission*[1] the declarations sought were the appropriate form of relief. That was a case in which it was held that the words "successor in title" had no relevance whilst the person listed in Annex E as the original owner of the property in question survived, and that when the respondent commission rejected the appellant's claim they took into consideration a factor which they had no right to take into account and, accordingly, their decision was a nullity.

On the basis of that argument it was contended that the status of the third defendant as Resident in the impugned proceedings was worse than that of the person in the following illustration of Lord Reid in the *Anisminic* case (at pages 212-13):

> "A statute provides that a certain order may be made by a person who holds a specified qualification or appointment, and it contains a provision, similar to section 4(4), that such order made by such a person shall not be called in question in any court of law. A person aggrieved by an order alleges that it is a forgery or that the person who made the order did not hold that qualification or appointment. Does such a provision require the court to treat that order as a valid order?"

In other words, on the analogy of the above illustration the contention is that the third defendant as Resident Third Division was not qualified to sit in the Resident's native court of the Second Division at Simanggang.

Before I deal with that point the important question which first arises for determination is whether the Resident's native court of the Second Division at Simanggang ever became *functus officio* in relation to the intended appeal by the first defendant against the judgment of the district native court, Simanggang dated 6th November, 1967 in Civil Case No. 9 of 1967.

It is to be observed that a Resident's native court is constituted under the provisions of paragraph (c) of sub-section (1) of section 8 of the Native Court Ordinance. It consists of "a person for the time being holding or acting in the office of Resident of a Division sitting with a native officer or chief and two assessors, being persons whom the Resident has reason to believe are versed in the customary law relevant to the determination of the appeal." Under subsection (3) of section 7 it is this court to which the appeal lies, and it is this court which may extend the time to appeal. It follows therefore that a Resident by himself has no power to adjudicate upon any matter relating to an intended appeal to the Resident's native court. He is not even the officer who receives the appeal. Mr. Nais, Resident Second Division, would therefore appear to have misunderstood the provisions of the Ordinance when he took it upon himself to reject the first defendant's appeal and to decide by himself that the first defendant's application for extension of time to appeal could not be entertained. The advocates concerned may well have contributed to this misconception by making an application direct to him for extension of time to appeal. It is clear, therefore, that the decision of Mr. Nais to reject the first defendant's application did not render the Resident's native court as such *functus officio* in relation to the intended appeal.

It was probably because Mr. Nais chose to decide by himself a question relating to the intended appeal,

when he had no power to do so, that the State Secretary, on the advice of the Attorney-General, wrote to him to suggest that another Resident be appointed to sit in the Resident's native court to hear the appeal. The State Secretary pointed out to him that, since he had expressed and communicated his views on the matter to the advocates in his administrative capacity, that was the best course in the interests of justice. But as the plaintiff is at liberty to pursue his claim for damages on the basis of any alleged conspiracy amongst various parties, I would refrain from expressing any opinion as to whether this was an act of interference in the course of justice on the part of the State Secretary.

It was contended by Mr. Thomas that the third defendant as Resident of the Third Division had no jurisdiction to sit in the Resident's native court in the Second Division at Simanggang. I must say at once that I can find no justification for upholding this contention. As I have already stated, section 8(1)(c) of the Ordinance expressly provides for a person holding or acting in the office of Resident of a Division to constitute a Resident's native court, unlike the provision in section 10(1) of the Sabah Native Courts Ordinance (Cap. 86) which says that an appeal from a native court shall lie to the district officer of the district in which such native court is situate. At all relevant times the third defendant was a Resident of the Third Division. As a Resident of a Division he had jurisdiction to constitute a Resident's native court in any Division of Sarawak. The court constituted by him in the Second Division to hear and determine the first defendant's application for extension of time to appeal and the appeal itself was therefore properly constituted, so that the decision of that court dated 15th October, 1968 setting aside the decision of the district native court in case No. 9 of 1967 was not a nullity. I say this in view of what I have already said that the Resident's native court in the Second Division at Simanggang at no time became *functus officio* in relation to this appeal prior to the hearing of the appeal in that court on 15th October, 1968.

Under section 8(1)(d) of the Native Courts Ordinance an appeal, by way of case stated on a point of law or native custom, lies from the decision of a Resident's native court to the Native Court of Appeal as constituted by subsection (2) of that section which reads as follows: —

"(2) There shall be a Native Court of Appeal which shall in each case be presided over by a Judge and shall consist of one or more Judges and of persons qualified to preside in a Native Court or persons who the Governor is satisfied have knowledge of the customary law or of one of the customary laws relevant to the determination of the appeal:

Provided that —

(a) the Native Court of Appeal shall be constituted in each case by the Governor after consultation with the Chief Justice and may consist, in the discretion of the Governor exercised after such consultation, of three, five or seven members including the presiding Judge;

(b) the majority of the members of each such court shall be natives of Sarawak; and

(c) the decision of the majority of the Native Court of Appeal as so constituted shall be the decision of the court."

Section 9(1) of the Ordinance provides as follows: —

"(1) The appellate court may —

(a) itself re-hear the case;

(b) hear further evidence, or order the lower court to hear further evidence;

(c) order a re-trial;

(d) set aside or vary the decision of the lower court; or

(e) make such other order as it may deem just:

Provided that the powers in this section shall be exercised by the Native Court of Appeal only in so far as may be necessary or desirable consequent upon the court's decision on a point of law or native custom."

It is to be observed that the Native Court of Appeal has very wide powers in relation to any appeal brought before it.

It was contended on behalf of the plaintiff that he was not obliged to go to the Native Court of Appeal, and that he could go straight to the High Court to have the order of the Resident's native court set aside and to ask for the necessary declarations. For this proposition he relied on the decision in *Dyson* v. *Attorney-General*[2] in which it was held that the rules of procedure which enable the court or a judge to strike out any pleading on the ground that it discloses no cause of action are never intended to apply to any pleading which raises a question of general importance or a serious question of law. It was said in this connection that the plaintiff's reason for not going to the Native Court of Appeal was that because of the proviso (c) to subsection (2) of section 8 of the Ordinance, the opinion of a judge as presiding officer in the Native Court of Appeal can be overriden by other members of the court. In my judgment there is no substance in any of these arguments. As pointed out by counsel for the respondents, the real issue here is whether the plaintiff should not first exhaust his remedy by way of appeal to the Native Court of Appeal.

It is well settled law that the court will not make a declaratory judgment where an adequate alternative remedy is available (see *Halsbury's* Laws of England, 3rd edition, volume 22, page 749, paragraph 1611). To quote but a few authorities in support of that proposition, Lord Herschell said in *Barraclough* v. *Brown*:[3]

"It was argued for the appellant that, even if not entitled to recover the expenses by action in the High Court, he was, at all events, entitled to come to that court for a declaration that on the true interpretation of the statute he had a right to recover them. It might be enough to say that no such case was made by the appellant's claim. But, apart from this, I think it would be very mischievous to hold that when a party is compelled by statute to resort to an inferior court he can come first to the High Court to have his right to recover — the very matter relegated to the inferior court — determined. Such a proposition was not supported by authority, and is, I think, unsound in principle."

In *Pasmore* v. *The Oswaldtwistle Urban District Council*[4] Earl of Halsbury L.C. said:

"... The principle that where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute, is one which is very familiar and which runs through the law."

In the more recent case of *Wilkinson* v. *Barking Corporation*[5] Asquith L.J. said:

"....It is undoubtedly good law that where a statute creates a right and, in plain language, gives a specific remedy or appoints a specific tribunal for its enforcement, a party seeking to enforce the right must resort to that remedy or that tribunal, and not to others."

In the present case, as I have already stated, an appeal lay from the Resident's native court to the Native Court of Appeal. That Native Court of Appeal is presided over by a judge of the High Court and must therefore be considered a court which is competent to decide any question of law. The fact that the decision of the presiding judge on a question of law could be overriden by other members of the court is beside the point. The question of crossing that bridge would arise only when the bridge is reached. In so far as his complaint against the quashing by the Resident's native court of the order made in his favour by the district court was concerned, the plaintiff should have appealed to the Native Court of Appeal instead of going to the High Court. As regards his right to prosecute such appeal, the plaintiff, ironically, will now find himself in the same position as the first defendant when he failed to appeal to the Resident's native court within the prescribed time. The High Court in striking out the portions in his writ of summons and the statement of claim in relation to the declarations sought expressly left it open to the plaintiff to pursue his claim for damages on grounds of conspiracy.

For the reasons I have stated, the plaintiff's action, in so far as it related to his claim for the declarations sought, was clearly misconceived, and the learned judge in the court below was quite right in making the order for that part of his claim to be struck out. I would therefore dismiss this appeal with costs.

Appeal dismissed.

LEONG BEE & CO. v. LING NAM RUBBER WORKS

[P.C. (Lord Hodson, Lord Guest & Sir Frank Kitto) July 6, 1970]

[Privy Council Appeal No. 23 of 1968]

Negligence — Fire — Fire breaking out in a factory and spreading to building next door — Outbreak of, not reasonably foreseen — Finding of negligence by trial judge unsupported by evidence.

Nuisance — Allegation that appellant caused or permitted in their premises a danger of fire within the range of reasonable foreseeability — Whether foreseeability of injury an ingredient in tort of negligence — Foreseeability an element in proof of responsibility.

This was an appeal against the decision of the Federal Court reported in [1968] 1 M.L.J. 216. The facts were that a fire broke out in the early hours of a Sunday morning at a factory building occupied by the respondents at Tampoi, Johore Bahru and it spread to the building next door which was owned and occupied by the appellants and destroyed it also. The appellants sued the respondents for damages for the loss occasioned to them by the fire, asserting causes of action in negligence and nuisance. The trial judge gave judgment for the appellants on the claim in negligence but dismissed the claim in nuisance. On appeal to the Federal Court the decision of the trial judge on the claim in negligence was reversed, but they dismissed a cross appeal on the claim in nuisance. The appellants appealed to the Privy Council.

Held, dismissing the appeal: (1) in this case there was no evidence that the respondents either had brought on their land a source of fire danger imperilling the appellant's property in the form of a building or materials likely to catch fire or of machinery likely to commence a fire or they had permitted a condition conducive to an outbreak of fire to exist there and therefore no judgment on the claim in nuisance could properly have been given for the appellants;

(2) the Federal Court was right in holding that an outbreak of fire on the respondent's premises in the early hours of the morning was not reasonably to be foreseen and therefore the respondents owed no duty to the appellants;

(3) the only duty which the respondents owed to the appellants in respect of a fire not caused by any act or omission of theirs or any servant or agent of theirs was based upon knowledge of the fire, ability to foresee the consequences to the appellants of not checking it and, ability to abate it, and in the circumstances of the case there was no evidence of failure of such duty;

(4) the finding of negligence against the respondents was unsupported by the evidence, and the Federal Court was right in setting aside the judgment which had been given for the appellants.

Semble: The common law presumption referred to in *Becquet* v. *Mac Carthy*[2]; *Musgrove* v. *Pandelis*[3] and *Mason* v. *Levy Auto Parts of England Ltd.*,[4] that a fire which began on a man's property arose from some act or default for which he was answerable, has no application in Malaysia having been displaced by statute, first by 6 Anne c. 31, s. 6 and later by the Fires Prevention (Metropolis) Act, 1774, the presumption formed no part of the common law of England at the date of the coming into force of the Civil Law Ordinance, 1956.

Cases referred to:-

(1) *Rylands* v. *Fletcher* (1868) L.R. 3 H.L. 330.

(2) *Becquet* v. *Mac Carthy* (1831) 2 B & Ad. 951 at p. 958.

(3) *Musgrove* v. *Pandelis* [1919] 1 K.B. 314 at p. 317.

(4) *Mason* v. *Levy Auto Parts of England Ltd.* [1967] 2 Q.B. 530 at pp. 538, 539.

(5) *Overseas Tankship (U.K.) Ltd.* v. *Norts Dock & Engineering Co. Pty. Ltd.* [1961] A.C. 388.

(6) *Goldman* v. *Hargrave* [1967] A.C. 645.

(7) *Longhurst* v. *Metropolitan Water Board* [1948] 2 All E.R. 834 at p. 839.

(8) *Overseas Tankship (U.K.) Ltd.* v. *Miller Steamship Co.* [1967] A.C. 617 at p. 639.

(9) *Sedleigh-Denfield* v. *O'Callaghan* [1940] A.C. 880 at p. 897.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Mervyn Heald Q.C. and *George Newman* for the appellants.

Robert Gatehouse Q.C. and *Peter Mooney* for the respondents.

Sir Frank Kitto: In the early hours of Sunday, 2nd February 1964, a fire broke out in a factory building occupied by the respondents in Tampoi, Johore Bahru, and spreading to the building next door, which was owned and occupied by the appellants, it destroyed that also. The appellants sued the respondents in the High Court in Malaya at Johore Bahru for damages for the loss occasioned to them by the fire, asserting causes of action which, as the case proceeded, were identified by common consent as negligence and nuisance. The doctrine of *Rylands* v. *Fletcher*[1] was re-